



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.388 OF 2021

Appellant : : Vanmala wd/o Jagannath Khandare,
(Original Claimant on R.A.) Aged about 55 years, Occupation : Service,
R/o. Gurunanak Nagar, Godhani Road, Yavatmal,
Taluka and District Yavatmal.

– Versus –

Respondents : : 1) Mangeshgir s/o Prakashgir Giri,
(Original Non-Applicants on R.A.) Aged about 25 years, Occupation : Driver,
R/o Shivaji Nagar, Lohara, Yavatmal,
Taluka and District Yavatmal,
R/o Bulari, Taluka Darwha, District Yavatmal.

2) Sandip s/o Pundalik Dudhe,
Aged about Major, Occupation : Business,
R/o Ward No.16, Durga Chowak, Bandarpura,
Darwha, Tq. Darwha, District Yavatmal.

3) The New India Assurance Company Limited,
through its Branch Manager,
1st Floor, Yerawar Building, Datta Chowak,
Yavatmal, Taluka and District Yavatmal.

Mr. Vivek Awchat, Advocate for the Appellant.
Mr. A.W. Paunikar, Advocate for Respondent No.3.
None for Respondent Nos.1 and 2.

CORAM : **M.W. CHANDWANI, J.**
RESERVED ON : **25th JUNE, 2024.**
PRONOUNCED ON: **23rd AUGUST, 2024.**

J U D G M E N T :

Heard learned Counsels for the parties.

02. Admit.

03. The challenge in this appeal is to the impugned award dated 20/08/2020 passed by the Motor Accident Claims Tribunal, Yavatmal (*hereinafter referred to as "Tribunal" for short*) in M.A.C.P. No.81/2013, thereby dismissing the claim of the appellant/claimant for compensation of Rs.10,00,000/- on account of death of her husband in a vehicular accident.

04. The facts germane for disposal of the appeal are as follows :

- i. The appellant-claimant, a widow, filed a claim petition before the Tribunal for compensation of Rs.10,00,000/- on account of death of her deceased husband-Jagannath Khandare claiming his death as an accidental death in a vehicular accident caused by the act of negligence of respondent No.1, the driver of Ape Auto-Rickshaw bearing Registration No.MH-29/V-7356 (*hereinafter referred to as "offending vehicle" for short*). It is contended in the petition that on 04/10/2012, when the deceased was riding his motorcycle bearing Registration No.MH-29/A-7493 in moderate speed on the left side of Arni Road, the offending vehicle came from behind in high speed and dashed the motorcycle of the deceased. As a result of the accident, the deceased sustained serious bodily injuries. He was taken to

Sanjeevan Hospital at Yavatmal and then shifted to Orange City Hospital at Nagpur. Ultimately, the deceased succumbed to the accidental injuries on 07/10/2012.

- ii. After a gap of 2½ months, F.I.R. came to be lodged against respondent No.1, driver of the offending vehicle, under Sections 279 and 304-A of the Indian Penal Code. The deceased was a retired Headmaster from Government Secondary Ashram School, Chichghat and was drawing a monthly pension of Rs.16,500/-. He was aged 62 years at the time of his death. Therefore, a compensation of Rs.10,00,000/- was claimed before the Tribunal.
- iii. Respondent No.1 and respondent No.2, the driver and owner of the offending vehicle respectively, did not appear before the Tribunal. The case against them was proceeded ex parte. Respondent No.3, the insurer of the offending vehicle, denied the claim of the appellant mainly on the grounds that the offending vehicle, which was insured with respondent No.3, was not involved in the accident; there is a delay of 2½ months in lodging the F.I.R. and the deceased died by falling from his own scooter/ vehicle. Respondent No.3, therefore, sought rejection of the claim.

iv. The Tribunal, after hearing the matter on merits, dismissed the claim of the appellant by holding that the appellant failed to prove that the deceased died in a vehicular accident that occurred on 04/10/2012 involving the offending vehicle. Feeling aggrieved with the dismissal of the claim, the present appeal came to be filed.

05. Mr. Vivek Awachat, learned Counsel appearing on behalf of the appellant vehemently submitted that just because there is a delay in lodging the F.I.R., the claim cannot be dismissed. At the time of death of her husband, the appellant was in trauma and it is only after insistence by her daughter for reporting the incident to the Police Station, FI.R. came to be lodged. According to him, in spite of material available on record, the Tribunal did not appreciate the evidence in proper perspective. He submitted that charge-sheet for driving Auto-Rickshaw rashly and negligently has been filed, which *prima facie* suggests that the Auto-Rickshaw, which was insured with respondent No.3, was involved in the accident. This aspect has not been considered by the Tribunal. To buttress his submission, he seeks to rely on the decision of the Supreme Court in the case of *Ravi vs. Badrinarayan & Ors. in Civil Appeal No.1926 of 2011 (arising out of S.L.P. (C) No.11974 of 2008)*, wherein it has been held that although lodging of F.I.R. is vital in deciding the motor accident claim cases, delay in lodging the same should not be treated

as fatal for such proceedings, if the claimant has been able to demonstrate satisfactory and cogent reasons for it. Unless the kith and kin of the victim are able to regain a certain level of tranquillity of mind and are composed to lodge it, even if there is delay, the same deserves to be condoned.

06. *Per contra*, Mr. A.W. Paunikar, learned Counsel appearing on behalf of respondent No.3 supported the findings of the Tribunal and submitted that the Tribunal has rightly dismissed the claim. According to him, the appellant failed to prove the involvement of the offending vehicle, which was insured with respondent No.3. There is material on record, which goes to suggest that the deceased fell from his Scooter and his death is not an outcome of the accident involving the offending vehicle. Therefore, he sought dismissal of the appeal.

07. Having heard the learned Counsel for the appellant as well as the learned Counsel for respondent No.3 and after going through the material available on record, the following points arise for my determination :

Sr. No.	Points	Findings
1.	Whether the appellant proves that deceased-Jagannath Khandare died in a motor vehicular accident that occurred on 04/10/2012 involving Ape Auto bearing No.MH-29/ V-7356?	In the Negative

2.	Whether the appellant is entitled to compensation?	In the Negative
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08. In support of her claim, the appellant examined herself and deposed that deceased-Jagannath was riding his motorcycle. When he reached near Arni Road, the offending vehicle driven by respondent No.1 in a rash and negligent manner, gave violent dash to her husband from the back side, due to which, her husband was thrown off his motorcycle, whereby he sustained fatal injuries. He was shifted to Sanjeevan Hospital, Yavatmal and thereafter to Orange City Hospital at Nagpur, where he succumbed to the accidental injuries on 07/10/2012. Police papers in respect of the crime registered against respondent No.1, the driver of the offending vehicle, have been filed on record.

09. Evidently, the accident occurred on 04/10/2012 and the deceased died on 07/10/2012, whereas the F.I.R. came to be lodged on 16/12/2012 i.e. after two months and 12 days from the date of the accident.

10. No doubt, delay in lodging the F.I.R. should not be treated as fatal for claim petitions, if the claimant has been able to demonstrate satisfactory and cogent reasons for it, as held in the case of **Ravi vs. Badrinarayan** (*supra*). This aspect has been dealt with by the Tribunal in paragraph 22 of the impugned award, wherein the Tribunal has held that the

husband of the claimant died on 07/10/2012 and the claimant was busy in last rituals of her husband till 23/10/2012. After the last rituals, the children of the appellant went to their respective workplaces. The Tribunal has also held that the appellant has not given an explanation for not lodging the F.I.R. during the period from 24/10/2012 to 15/12/2012 considering that the appellant is a well educated person and one of her sons is in Military service.

11. This takes me to the medical summary of the Orange City Hospital at Nagpur (Exh.43), where the deceased was admitted after being shifted from Sanjeevan Hospital, Yavatmal, as well as the postmortem report of the deceased (Exh.40). Perusal of these documents goes to show that these documents record the cause of accident as “fall from Scooter and Motorcycle”, respectively. These documents nowhere whisper about the involvement of the offending vehicle (Ape Autorickshaw) in the accident, wherein the deceased suffered fatal injuries. Though the appellant has deposed about the violent dash to the motorcycle of the deceased by the offending vehicle, but the fact remains that she is not an eye-witness to the incident.

12. Perusal of the police papers goes to show that the brother-in-law of the deceased, i.e. the brother of the claimant claims to have reached on the spot of incident, immediately after the accident. He also claims that he moved the deceased to Sanjeevan Hospital at Yavatmal. But, he has not been

examined by the claimant to prove the involvement of the offending vehicle in the alleged accident. The claimant has also not examined the person, who has been shown as an eye-witness in the police case papers to prove the involvement of the offending vehicle, particularly, when the involvement of the offending vehicle is disputed, coupled with unexplained delay in reporting the accident to the police.

13. In these peculiar circumstances, it cannot be said that the appellant has shifted the burden on the insurer. Therefore, I do not find any substance in the argument of the learned Counsel for the appellant that in wake of failure of the Insurance Company to examine the driver, the Tribunal ought to have allowed the claim. In fact, in view of the facts and circumstances of the case, the initial burden has not been discharged by the claimant.

14. Insofar as the decision of the Supreme Court in case of Ravi vs. Badrinarayan (*supra*) relied upon by the appellant is concerned, in the said decision, the owner of the vehicle admitted the involvement of the vehicle in the accident in his statement recorded under Section 161 of the Code of Criminal Procedure and in his response to the notice issued under Section 133 of the Motor Vehicles Act, 1988, as well as while filling the injury report form at the time of admission of the deceased in the said case. It was clearly

mentioned that the cause of injury was road transport accident. Whereas, in the instant case, it has been specifically mentioned in the history given to the Doctor that the deceased fell from the Scooter. Therefore, the cited judgment will not be helpful to the appellant.

15. The Tribunal has rightly considered the evidence available on record in it's proper perspective and rightly held that the appellant failed to prove the involvement of the offending vehicle in the accident, which occurred on 04/10/2012. Therefore, the points that arose for determination are answered accordingly.

16. In light of the above discussion, no interference is required in the findings recorded by the Tribunal. The appeal is devoid of merits, hence, it fails. No costs.

(M.W. CHANDWANI, J.)

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